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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,901	12/11/2003	Robert J. Wilson	7560-0001	8457

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EXAMINER

HORTON, YVONNE MICHELE

ART UNIT PAPER NUMBER

3635

DATE MAILED: 02/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/733,901	Applicant(s) WILSON ET AL.	
	Examiner Yvonne M. Horton	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-31 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,7,10 and 32 is/are rejected.
- 7) ☒ Claim(s) 3,5,6,9,11-13 and 33-41 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 1-31 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the claim is directed to a method for securing a foundation form on a moisture barrier; however, neither the foundation form or the moisture barrier are being positively cited. The method is based upon and intended use. Thus, the form, moisture barrier, stake and plug must be positively claimed, and more specifically for claims 8 and 9 where there is a positive connection being made between the stake and the form.

In reference to claim 24, the claim is only directed to an apparatus, and not the moisture barrier. In order to be given patentable consideration, the moisture barrier must be positively cited.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

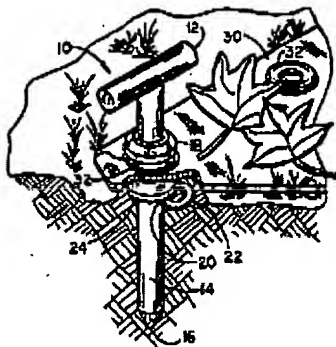
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,4,7,10 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #5,564,232 to CALLAWAY.

Regarding claim 1, CALLAWAY discloses a method including the steps of positioning one end of a stake (10) in a mating structure (18) of a plug (14); penetrating a moisture barrier (30) with a tip (16) of the plug (14); and forming a seal between a flange (18) that extends around a periphery of the plug (14) and the moisture barrier (30). In reference to claim 2, CALLAWAY further discloses the step of forming a seal until the flange (18) is disposed adjacent the moisture barrier (30), see figure 10.

Regarding claim 4, CALLAWAY further details the step of selecting a mating structure (18) that has a bore (not shown) in the plug (14) to receive a portion of the stake (10). In reference to claim 7, the step of selecting a mating structure (18) further includes allowing the stake (10) to be removable from the plug (30). Regarding claim 10, the method further includes removing the stake (10) from the mating structure (18).

In reference to claim 32, CALLAWAY discloses a prepared foundation cite, as shown in figure 2, including a moisture barrier (30) disposed over a portion of the cite, see figure 1, a plurality of plugs (10) traversing the moisture barrier (30) so as to be embedded in the soil (S) beneath the moisture barrier (30), see below; wherein the



plugs (14) include and elongate body having a tip end (16) and a peripheral flange (18) disposed on the elongate body opposite the tip end (16) such that the peripheral flange (18) forms a seal with the moisture barrier (30) surrounding an area where the elongate portion traverses the moisture barrier (30).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,564,232 to CALLAWAY in view of US Patent #3,785,606 to GREEN. CALLAWAY discloses the basic claimed method except for the inclusion of the step of securing the stake to a foundation form. GREEN teaches that it is known in the art to secure a foundation form (13) using a stake (40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method of CALLAWAY with the form of GREEN in order to ensure that whatever is positioned on the moisture barrier is contained thereon.

Allowable Subject Matter

Claims 3,6,12,13,16,17,19 and 25 stand objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 5,9,11 and 33-41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 14-31 are allowed.

Response to Arguments


Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Yvonne M. Horton
Art Unit 3635
1/26/06